

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

HERBERT DANIEL FISHER, JR.

PETITIONER

VS.

CIVIL ACTION NO. 1:05cv335-DCB  
CRIMINAL NO. 1:00cr79-DCB

UNITED STATES OF AMERICA

RESPONDENT

**CERTIFICATE OF APPEALABILITY**

A motion for a certificate of appealability having been filed in the captioned habeas corpus case [docket entry no. 95], in which the detention complained of arises out of process issued by a state court pursuant to 28 U.S.C. § 2254 or the detention arises out of a judgment and conviction in federal court which is being challenged pursuant to 28 U.S.C. § 2255, the court, considering the record in the case and the requirements of 28 U.S.C. § 2253 and Rule 22(b) of the Federal Rules of Appellate Procedure, hereby finds that:

**Part A**

☐ A certificate of appealability should issue. (See reasons below.)

☒ A certificate of appealability should not issue. (See reasons below.)

**Part B**

(for non-CJA pauper cases only)

☐ The party appealing is a pauper.

☒ The party appealing is not a pauper. (See reasons below.)

**REASONS:**

The petitioner has failed to make a “substantial showing of the denial of a constitutional right.” Cannon v. Johnson, 134 F.3d 683, 685 (5<sup>th</sup> Cir. 1998) (citing Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).

The petitioner has not requested leave to appeal in forma pauperis.

Date: June 13, 2006

S/DAVID BRAMLETTE  
UNITED STATES DISTRICT JUDGE